

SOL Summary in Our New Normal – March 30, 2020 – Kathryn Robb, Esq.

Most state legislative bodies convene their sessions between early January to mid-February and wrap up their lawmaking 5 to 6 months later. During that time they pass hundreds of bills. Well, not in this new science-fiction-like world in which we find ourselves. Unfortunately, this year most legislatures have shut down early, and indefinitely, as our nation and world respond to the highly contagious novel coronavirus. 2020 has thrown a curveball our way, so, the ambitiousness of our advocacy must shift to work outside the chambers. We will continue our fight for children on the sidelines of Capitol closures until those empty arenas are resurrected and filled again with our voices.

COVID-19 has slammed the proverbial brakes on all of our busy lives, causing us to suffer a whiplash of sorts. Yet that peculiar pain and stiffness reach far beyond the muscles in our necks; our movement is restricted, we are disoriented, and our plans are frozen stiff. It feels as if the gods and goddesses have taken an enormous eraser to all of our plans. Normalcy has been deleted, and little is left on our calendars. It is a true March madness, but on steroids, and it is threatening to stretch into our beloved spring and summer. Unthinkable cancellations abound – the 2020 Summer Olympics, the NBA, MLB, NHL, conferences, concerts, spring semesters, graduations, and licensing exams. Closing stores, restaurants, movie theaters, and gyms leave few places to go beyond a walk through the neighborhood. The rising tide of restrictions feels surreal, an odd dream of disappearance while we float 6 feet from those we know and love.

State House functions and statute of limitations reform efforts have also been caught in the great flood of COVID-19, the closings and cancellations are widespread. The world is upside down, and many industries have shifted their focus, including the focus on critical legislation. State legislatures in 34 states plus the District of Columbia and Puerto Rico have introduced COVID-19 support legislation. New York alone has introduced 23 bills related to this crippling pandemic. With most legislative calendars either truncated, adjourned, or adjourned Sine die, the silence in the chambers is unnerving. Any future special sessions will likely be reserved for emergency coronavirus bills or veto overrides.

In 2020, twenty-nine States have introduced SOL reform legislation for child sexual abuse cases. A few of those states were able to act before the rushing waves of this virus stopped them. Here's the quick breakdown:

- Florida's house bill 199 will eliminate the criminal SOL for felony sexual battery of victims under age 18. That bill passed in House and Senate, March 11, 2020.
- Indiana's senate bill 109 will retroactively extend the criminal SOL if expired by 5 years after discovery of DNA, recording, or confession evidence. It also permits victims to apply for victim compensation within 5 years of the discovery of such evidence. Governor Eric Holcomb signed senate bill 109 into Law on March 14, 2020.

- Utah house bill 247 will extend the criminal SOL for felony unlawful sexual activity with a minor and unlawful sexual conduct with a 16 or 17-year-old to age 28. The period is now the age of majority, 18, plus 10 years. This bill passed in House and Senate, March 11, 2020.
- Virginia Senate bill 724 extends the criminal SOL for misdemeanor sexual abuse of minors by adults more than 3 years older than the victim from age 19 to age 23 (age of majority, 18, plus 5 years). Governor Ralph Northam Signed Senate bill 724 into Law on March 11, 2020.
- West Virginia house bill 4559 extends the civil SOL against perpetrators from age 22 to age 36 (age of majority, 18, plus 18 years) or 4 years from discovery, whichever is later. The bill also extends the civil SOL against other individuals or organizations from age 20 to age 36 (age of majority, 18, plus 18 years). Governor Jim Justice signed house bill 4559 into Law on March 25, 2020.

Some other states were able to get one foot in ahead of the crisis and saw bills pass through one chamber, only to be postponed indefinitely, or ultimately die as the chambers emptied well before their normal calendar.

- Georgia's house bill 479 passed in House chamber on March 12, 2020, and is now adjourned until an undetermined future date. HB 479 would extend the civil SOL from age 23 to age 38, extend the delayed discovery rule from 2 years to 4 years. It would also open a 1-year revival window against perpetrators and entities, with a limitation that claims against entities can only be brought for conduct occurring after 1988.
- Kentucky's House bill 47 passed in the House chamber on March 19, 2020. The legislature is Adjourned until March 27, 2020, that date will likely be extended. House bill 47 would extend the criminal SOL for misdemeanor child sex assault or abuse from age 23 to age 28 and broaden the applicable offenses. It would also extend the civil SOL for claims against individuals and entities from age 21 to age 28, 10 years from discovery, or 10 years after conviction of the perpetrator. The bill would also revive claims against perpetrators, individuals, and entities that fall within the age of 28 or 10 years from discovery or conviction SOL as of 2016, and revives all claims that were expired as of 2016.
- Maryland's House bill 974 passed in the House chamber unanimously on March 14, 2020. The bill would eliminate the civil SOL and open a 2-year revival window for all expired claims. The Senate did not act on HB 974 and Maryland General Assembly adjourned Sine die on March 18, 2020.
- New Mexico's House bill 302 passed in the House on February 14, 2020. The bill would eliminate the civil SOL for claims against institutions only, revive all expired claims against institutions unless they have vested right to be free from suit. Would change the

3-year discovery rule that runs from the disclosure of abuse to medical/mental health care providers to run from the knowledge of injury and open limited 18-month revival window for claims that were time-barred under the prior discovery rule. The legislature adjourned Sine die February 20, 2020

The surge of changes, postponements, and cancellations continue their rise, including in State Capitols across the country. These changes have offered an unexpected, and in some respects, unwelcome gift – time. Time to reflect on the flame of our mission and our collective citizenship. In this time, I wonder if we can shift from whining about “what we cannot do” to the question “what opportunities does this new space offer?” As the waters of this catastrophe drown out all we knew as normal, and we await the Noah’s Ark of science, medicine, and sensible political leadership to save us, I am keenly aware of the fragility of life – our shared fragility. So, in this bizarre moment of “alone togetherness,” we are called upon to bear witness to the dire need to respect and tend to our shared human vulnerability, just as we do for the very children we are driven to protect.